



JOHN R. ASHCROFT

SECRETARY OF STATE  
STATE OF MISSOURI

JAMES C. KIRKPATRICK  
STATE INFORMATION CENTER  
(573) 751-4936

ELECTIONS DIVISION  
(573) 751-2301

January 11, 2021

The Honorable Nicole Galloway  
State Auditor  
State Capitol Building  
Jefferson City, MO 65101

RECEIVED  
JAN 11 2021  
STATE AUDITORS OFFICE

RE: Petition approval request from Matt Vitale regarding a proposed statutory amendment to Chapter 407 (2022-008)

Dear Auditor Galloway:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Revised Statutes of Missouri filed by Matt Vitale on January 11, 2021.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

John R. Ashcroft

cc: Hon. Eric S. Schmitt  
Sheri Hoffman  
Trish Vincent

Seal



Be it enacted by the people of the State of Missouri:

Chapter 407, RSMo, is amended by adding four new sections, to be known as sections 407.652, 407.653, 407.654, and 407.655.

#### 407.652

- (a) "Authorized repair provider" means an individual or business who is unaffiliated with an original equipment manufacturer and who has an arrangement with the original equipment manufacturer, for a definite or indefinite period, under which the original equipment manufacturer grants to the individual or business a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering the services of diagnosis, maintenance, or repair of digital electronic equipment under the name of the original equipment manufacturer, or other arrangement with the original equipment manufacturer to offer such services on behalf of the original equipment manufacturer. An original equipment manufacturer who offers the services of diagnosis, maintenance, or repair of its own digital electronic equipment, and who does not have an arrangement described in this subsection with an unaffiliated individual or business, shall be considered an authorized repair provider with respect to such equipment.
- (b) "Digital electronic equipment" or "equipment" means any product that depends for its functioning, in whole or in part, on digital electronics embedded in or attached to the product.
- (c) "Diagnostic and repair information" means any information provided to an authorized repair provider by the manufacturer of digital electronic equipment for the purposes of diagnosis, service, maintenance, or repair of the digital electronic equipment. "Diagnostic and repair information" includes manuals, diagrams, reporting output, service code descriptions, repair technical updates, diagnostic software, service access passwords, updates and corrections to firmware, security patches, and any related information or documentation.
- (d) "Documentation" means any manual, diagram, reporting output, service code description, schematic diagram, or similar kinds of information provided to an authorized repair provider for purposes of its affecting the services of diagnosis, maintenance, or repair of digital electronic equipment.
- (e) "Embedded software" means any programmable instructions provided on firmware delivered with digital electronic equipment, or with a part for such equipment, for purposes of equipment operation, including all relevant patches and fixes made by the manufacturer of such equipment or part for these purposes.
- (f) "Fair and reasonable terms" for obtaining a part, tool, or documentation means at costs and terms including convenience of delivery and of enabling functionality, and including rights of use, equivalent to the most favorable costs and terms offered by the original equipment manufacturer to an authorized repair provider, using the net costs that would be incurred by the authorized repair provider in obtaining an equivalent part, tool or documentation from the original equipment manufacturer, accounting for any discounts, rebates, or other incentive programs in arriving at the actual net costs. For documentation, including any relevant updates, "fair and reasonable terms" means at no charge except that, when the documentation is requested in physical printed form, a charge may be included for the reasonable actual costs of preparing and sending the copy.
- (g) "Independent repair provider" means an individual or business operating in this State, who does not have an arrangement described in subsection (a) with an original equipment manufacturer, and who is not affiliated with any individual or business who has such an arrangement, and who is engaged in the services of diagnosis, maintenance, or repair of digital electronic equipment, except that an original equipment manufacturer or, with respect to that original equipment manufacturer, an individual or business who has such an arrangement with that original equipment manufacturer, or who is affiliated with an individual or business who has such an arrangement with that original equipment manufacturer, shall be considered an independent repair provider for purposes of those instances in which it engages in the services of diagnosis, maintenance, or repair of digital electronic equipment that is not manufactured by or sold under the name of that original equipment manufacturer.
- (l) "Original equipment manufacturer" means a business engaged in the business of selling or leasing new digital electronic equipment manufactured by or on behalf of itself, to any individual or business.
- (m) "Owner" means an individual or business who owns or leases digital electronic equipment purchased or used in this State.
- (n) "Part" means any replacement part, either new or used, made available by an original equipment manufacturer for purposes of effecting the services of maintenance or repair of digital electronic equipment manufactured or sold by the original equipment manufacturer.
- (o) "Trade secret" means any "trade secret" as that term is defined under paragraph (3) of 18 U.S.C. 52 Section 1839.

#### 407.653

- For digital electronic equipment, and parts for such equipment, sold or used in the state of Missouri, an original equipment manufacturer shall make available, for purposes of diagnosis, maintenance, or repair, to any independent repair provider, or to the owner of digital electronic equipment manufactured by or on behalf of, or sold by, the original equipment manufacturer, on fair and reasonable terms:
  - Documentation, parts, and tools, inclusive of any updates to information or embedded software.
  - Diagnostic and repair information that is provided to an authorized repair provider available to an independent repair provider or owner in the same manner that such information is provided to the authorized repair provider without any additional charge.
  - Service parts provided to an authorized repair provider available for purchase by an independent repair provider or owner. However, the manufacturer need not make accessible for purchase any service part no longer available to the manufacturer or the authorized repair provider.
  - Diagnostic repair tools that incorporate the same diagnostic repair capabilities made available to an authorized repair provider available for purchase by an independent repair provider or owner.
  - Any special documentation, tools, and parts needed to reset an electronic security lock or other security-related function when disabled in the course of diagnosis, maintenance, or repair of the equipment. Such documentation, tools, and parts may be made available through appropriate secure release systems.
- Any original manufacturer that sells any diagnostic, service, or repair documentation to any independent repair provider or to any owner in a format that is standardized with other original manufacturers, and on terms and conditions more favorable than the manner and the terms and conditions pursuant to which the authorized repair provider obtains the same diagnostic, service, or repair documentation, is prohibited from requiring any authorized repair provider to continue purchasing diagnostic, service, or repair documentation in a proprietary format, unless the proprietary format includes diagnostic, service, or repair documentation or functionality that is not available in such a standardized format.
- Original manufacturers of digital electronic equipment sold on or after January 1, 2023, in the state of Missouri are prohibited from designing or manufacturing digital electronic equipment in such a way as to prevent reasonable diagnostic or repair functions by an independent repair provider. Preventing reasonable diagnostic or repair functions includes permanently affixing a battery in a manner that makes it difficult or impossible to remove.

#### 407.654

- Nothing in this Act shall be construed to require an original equipment manufacturer to divulge a trade secret to an owner or an independent service provider except as necessary to provide documentation, parts, and tools on fair and reasonable terms.
- No provision in this Act shall be construed to alter the terms of any arrangement in force between an authorized repair provider and an original equipment manufacturer, including, but not limited to, the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to such arrangement, except that any provision in such terms that purports to waive, avoid, restrict, or limit the original equipment manufacturer's obligations to comply with this section shall be void and unenforceable.
- This section shall not require manufacturers or authorized repair providers to provide an owner or independent repair provider access to nondiagnostic and nonrepair information provided by a manufacturer to an authorized repair provider pursuant to the terms of an authorizing agreement.

#### 407.655

- An independent repair provider or owner that believes that a manufacturer has failed to provide information, including documentation, updates to firmware, safety and security corrections, diagnostics, documentation, or a tool required by this section, shall notify the manufacturer in writing and give the manufacturer thirty days from the time the manufacturer receives the complaint to cure the failure. If the manufacturer cures the complaint within thirty days, damages are limited to actual damages in any subsequent litigation.
- If the manufacturer fails to respond to the notice provided in subdivision (1) of this subsection or if an independent repair facility or owner is not satisfied with the manufacturer's cure, the independent repair facility or owner may file a complaint in district court. The complaint shall include:
  - Written information confirming that the complainant attempted to acquire and use, through the then-available standard support function provided by the manufacturer, all relevant diagnostics, tools, service parts, documentation, and updates to embedded software, including communication with customer assistance via the manufacturer's then-standard process, if made available by the manufacturer; and
  - Evidence of manufacturer notification as required in subdivision (1) of this subsection.
- The attorney general shall enforce this section. Each violation of this section shall be punishable by a three-thousand-dollar fine, which shall be deposited in the general revenue fund established under section 33.543.